IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc. Application No. 659 of 2005

1 Vijay Yadav s/o Shri Bihari Lal
R/o Ward No.4,Bhadaipura
PS Rudrapur
District Udham Singh Nagar
2 Ranveer Singh s/o
Shri Hukum Singh
R/o Bhadaipura, PS Rudrapur
District udham Singh Nagar
3 Shishu Pal s/o Shri Mohan Lal
R/o Adarsh colony
PS Rudrap[ur
District Udham Singh Nagar
4 Anil Shaili @ Boby S/o Shri Madan Lal
R/o Awash Vikash Kichha
PS Kichha
District Udham Singh Nagar applicants

Versus

1. State of Uttaranchal
2 Sunil Kumar s/o Shri Jai Ram Singh
r/o Village Sakainiya
PS Gadarpur
District Udham Singh Nagar opposite party

Hon'ble B.C. Kandpal, J

This application under Section 482 Cr.P.C has been filed for quashing the order dated 7.9. 2005 passed by 2nd Upper Judicial Magistrate,Rudrapaur in criminal case No. 142 of 2005 State versus Shishu Pal and others.

Brief facts giving rise to this application are that a First Information Report was lodged on 9.8. 2004 against the applicants by opposite party No. 2 under Section 395/397 and 412 IPC.

The applicants moved bail application before the Learned Sessions Judge Udham Singh Nagar and all the four applicants/ accused were granted bail on different dates i.e. 3.9.2004, 10.9.

2004, 14.9.2004 and 15.9.2004 respectively, by the learned Sessions Judge.

The Investigation Officer thereafter on 22.12.2004 submitted a Charge sheet in which section 395,397 IPC have been deleted and Section 396/412 IPC have been incorporated.

The learned Judicial Magistrate concerned passed an order and directed the applicants on 7.9. 2005 to get the Bail under Section 396 IPC before 30.9.2005.

The contention of the applicants is that Section 396 IPC is triable by Sessions Judge and as per the order passed by the Judicial Magistrate, the applicants have to surrender in the court of Judicial Magistrate, thereafter the bail application will be decided by the Sessions Judge and till that time the applicants will have to remain in jail.

The applicants feeling aggrieved by the aforesaid order of the learned Judicial Magistrate have approached this Court by way of this application for direction to the court concerned to the affect that they may be released on furnishing fresh bail bond on the same date.

It is now well settled law that once the accused has been granted bail in a criminal case, he need not to file fresh bail application for grant of bail in another added Section which though seems to be graver then the offence under which he was granted bail earlier.

I therefore, allow the petition with the direction to the court concerned to permit the applicants to furnish fresh surety bond without requiring them to file fresh bail application.

The petition is accordingly disposed of.

(B.C. Kandpal, J.)

29.09.2005
NBJ